

EXHIBIT 8
DATE 3/18/09
SB 396

Senate Bill 396
March 18, 2009
Presented by Bob Lane
House Natural Resources Committee

Mr. Chairman and committee members, for the record I am Bob Lane, Chief Legal Counsel of Montana Department of Fish, Wildlife & Parks (FWP).

FWP opposes SB 396. Under Montana's Water Use Act, the rights of a water right holder to make changes in the use of their water is carefully balanced against the rights of other appropriators to the continued use of their water rights. The appropriator who wishes to make a change may not do so if that change would adversely affect another water user.

Section 85-2-402 of the Montana Code governs changes to existing water rights. Along with criteria that are designed to prevent adverse effect, it protects existing water users by providing for notice to other water users and an opportunity for objection before a change is made. SB 396 would exempt one kind of water right change from the requirements of 85-2-402.

The bill is written in a manner that makes it appear that a water user can only take advantage of the exemption if he meets some basic requirements, like not increasing the amount of water diverted. However, the bill does not specify whether "amount" of water means flow rate or volume. In other words, changing a point of diversion and, for example, using a pump rather than a headgate, may allow an appropriator to divert water at times and under conditions in which he historically could not do so. The existing change criteria in 85-2-402 guards against this possibility on behalf of other water users.

SB 396 purports to provide notice to other water users and an opportunity for objection. However, the appropriator will have already made the change. A change in point of diversion requires an investment of time and money. If the policy of the Water Use Act and this body is to allow changes in the use of water rights while protecting existing users by requiring DNRC to scrutinize and regulating the proposed change, SB 396 is a step in the wrong direction. It is impractical and ineffective to regulate changes after they have been made. To put it simply the regulator, DNRC, needs to be able to do its job before the regulated action is taken. Therefore, I urge you to reject this amendment of the Water Use Act that upsets the careful balance between the right to make changes in the place and manner of water use and the protection of other water users.

Thank you.